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DSA-SS
EF 02-10

October 21, 2010

Via Fax, Email & US Mail

Dave Walls, Executive Director
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Fax No. (919)263-0959
cbsc@dgs.ca.gov

Re: Request for Public Hearing with Respect to the Notice of Proposed Action dated September 15, 2010 (EF 02-10 DSA-SS Part 1); The Proposed Amendments to the Field Act Regulations; and Other Strange and Illegal Efforts Regarding Over 30,000 Illegal Uncertified Occupied California Public School Buildings

Dear Mr. Wells,

In regard to the above referenced matters, I hereby make the following written comments, requests, objections, and observations:

Request for Public Hearing

I hereby request a public hearing under Government Code §11346.8, pursuant to Government Code §11346.5(a)17.

Request for Notice of Hearing or Proceedings

I also request that I be provided notice of any hearings or proceedings.

Request for Notice of Modifications, and any Other Notices, Etc.

I also request that I be provided notice of any modifications, and any and all other notices or other documents issued or published with respect to these matters.

Request for Restitution under Victim's Bill of Rights

This failure constitutes a violation of Article 1, §28, of the *California Constitution*, and I request enforcement of my *Right to Safe Schools*, and my *Victim's Bill of Rights*, as a taxpayer, parent, community member, and Californian, as well as restitution, and all of my other rights, under the *Victim's Bill of Rights*.

Request for Compensation

The ongoing and continuous failure to protect me and my rights, as described herein, constitutes a violation of Government Code §816.5, and demand is hereby made under Government Code §910 *et seq.*, for both compensation to me under Article 1, §28, of the *California Constitution*, and I request enforcement of my *Right to Safe Schools*, and my *Victim's Bill of Rights*, as a taxpayer, parent, community member, and Californian. Among other things, I have incurred substantial attorney's fees and costs in pursuing these matters.

Objection to Publish Emergency Regulations

To the extent that this overall effort is an attempt to create, enforce, or otherwise publish emergency regulations, such effort is in violation of Government Code §11346.1(a)(1), and is only specifically subject to Government Code §11346.1; Government Code §11349.5; and, Government Code §11349.6; and no others. Therefore, it is in violation of rule-making to proceed the "nonemergency" route.

Objection to Lack of Finding of Emergency

To the extent that this overall effort is an attempt to create, enforce, or otherwise publish emergency standards, such effort is in violation of Health & Safety Code §18937 in at least four different ways:

First, there has been no valid "finding of emergency required by Sections 11346.1 and 11346.5 of the Government Code." In this regard, Government Code §11342.545 defines "Emergency" as "a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare." While I agree that 12,000 to more than 30,000 illegal uncertified public school buildings is a very serious threat to the health, safety, and general welfare of all Californians, it took nearly 30 years to get here (since 1982), and DSA cannot say with any degree of certainty that any of those buildings is safe, given the lack of oversight, enforcement, and regulatory failure that has occurred, to bring us this result.

> (c) Notwithstanding any other provision of law, no emergency regulation that is a building standard shall be filed, nor shall the building standard be effective, unless the building standard is submitted to the California Building Standards Commission, and is approved and filed pursuant to Sections 18937 and 18938 of the Health and Safety Code." [Emphasis added.]

It is clear that DSA has proceeded by way of the usual "nonemergency regulations in accordance with" the standard amendment procedures, generally used in all circumstances, *other than in emergencies.*

It is also clear that, had DSA proceeded, instead, by way of emergency building standard regulation, *DSA would have been required to formally have a finding of emergency* (rather than just calling it emergency regulation for the 2010 code cycle), and would then have had *to specify and defend its finding of emergency.* In that case, DSA would clearly have failed to support its purported "finding of emergency" for a number of obvious reasons, the most important of which appears to be that the "situation identified in the finding of emergency existed and was known to the agency . . . in sufficient time to have been addressed through nonemergency regulations . . ."

In this case, DSA admits in its own proposed regulations that this situation began to occur as early as 1982, and now involves over 12,000 uncertified public school buildings. The only way to achieve this amazing number of illegal buildings, especially given the letter, purpose, and spirit of the *Field Act*, would be to have in place a systemic "standard of general application" in the form of written and unwritten rules and regulations that effectively had the entire machinery at DSA's disposal literally looking the other way.

In fact, this is the ***best*** that could be said about this horrendous situation. Other possible scenarios leading to this result would include systemic fraud and corruption.

Example of Internal Inconsistency

Simply by way of example only, the proposed regulations were so poorly thought through, that there is a glaring inconsistency within the proposal documents – On the one hand, in the Notice of Filing dated September 15, 2010 (four pages), on page 3 thereof, under the heading, "Assessment of Effect of Regulations Upon Jobs and Business Expansion, Elimination or Creation, it says that ***there would no effect at all on the creation or elimination of both jobs and businesses.***

Yet, on the other hand, the purported "Finding of Emergency" by DSA of unknown date, on page 2 thereof, under the heading, "English Policy Statement," DSA claims that the proposed regulation changes would result in "improving school housing for California students and teachers while providing an economic stimulus ***by creating new construction related jobs and services.***"

Objection to Failure to Explore Alternatives

DSA explored no other alternatives. The most glaring alternative that should have been explored by DSA, in lieu of these proposed changes, would be ***to begin enforcing the Field Act as it is written and as it was intended***. This would be the most appropriate approach, and would best serve the safety and welfare of our children, the teachers, and all of we Californians as community members in need of disaster or emergency shelter, and as taxpayers, parents, bondholders, and Californians, in general.

General Observations and Objections to Various Aspects of the Proposed Regulation Changes

I formally and vigorously object to the proposed amendments in their entirety. I formally and vigorously to the findings or reasons, and to the lack thereof, upon which these proposed amendments are based. There appears to be a general failure under Government Code §11349, with respect to Necessity, Authority, Clarity, Consistency, and Reference.

I also object to the vagueness of the proposed amendments in that they only refer to the "12,000" uncertified projects that have accumulated since 1982. For example, last year, I corresponded heavily with the Division of State Architect, the Office of the State Fire Marshall, the Attorney General, and the Governor's Office, among others, notifying them that in our school district (La Honda-Pescadero Unified School District – "LHPUSD") there were nearly a dozen uncertified buildings/projects that did NOT appear on the then-current list of uncertified projects maintained by DSA.

Based upon general research, I believe that there are more than 30,000 uncertified illegal projects Statewide, *many of which are simply unknown to DSA*. Therefore, ***I request that DSA formally identify each and every project intended to be addressed by these amendments***, so that there is no confusion later as to which projects are being targeted.

If these buildings/projects are not clearly identified now, the proposed amendments would effectively "grandfather" tens of thousands of illegal uncertified projects (or four-year voids) of which DSA is currently unaware. Therefore, the proposed changes are unnecessarily vague and ambiguous, intentionally so, in this, and in many other respects.

I formally and vigorously object to the finding of an "emergency," especially in light of the fact that uncertified projects have been accumulating for the last 30 years (since 1982). This can be no surprise.

There is already a wide disparity between what DSA shows "on paper" in its offices, on the one hand, and what has actually been built throughout the State over the last 100 years, on the other hand. These regulatory changes would only place further distance between what is out on site, on the one hand, and what "exists" in the mere paper world of DSA, on the other.

It should also be noted that the definition of "beneficial occupancy" has been abused by DSA, and therefore, there must be a much more complete and detailed statement defining the term in the current regulations. This would be one valid regulatory change that should be considered.

"Beneficial occupancy," within the meaning of Education Code §17315, simply and obviously refers to the ability of a school district to make use of a school building while uncertified during that period of time in which that building is undergoing the extremely rare circumstances providing for such exception *within the procedures* set forth in Education Code §17315 (i.e., death or incapacity of a third-party architect or other person required to provide a verified report). Making this clear to the industry would help considerably.

In conclusion, the existing regulations and laws, including the *Field Act*, are quite sufficient, and have been sufficient for nearly 80 years, since 1933, and the Long Beach Earthquake. The real problem comes with DSA's lack of political independence and its lack of enforcement.

I will be happy to share with you additional information that I have uncovered, and look forward to addressing these issues in a public hearing.

The people of California have a right to know the true state of affairs with respect to public school construction, and it's financing.

There should be "No China" on our watch.

Very truly yours,

Jeffrey S. Gananian, Esq.

cc: The Governor's Office (c/o Legal Affairs Secretary)
The Legislature (c/o Committees on Rules)
Director, The Office of Administrative Law
Michael Nearman, Department of General Services
Masha Lutsuk, Operations Deputy, Division of State Architect
California Coastal Commission
California Victim Compensation and Government Claims Board